No. 92-1902

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

VIENNA MORTGAGE CORPORATION,
Petitioner,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
As Receiver for the National Bank of Washington,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION OF PETITION FOR CERTIORARI

ROBERT C. SELDON, ESQ.
(*COUNSEL OF RECORD*)
BONNIE Y. HOCHMAN, ESQ.
KROOTH & ALTMAN
1850 M STREET, N.W.
FOURTH FLOOR
WASHINGTON, D.C. 20036

Counsel for Petitioner
Vienna Mortgage Corporation

Date: August 16, 1993.

Balmar Legal Publishing Services, Washington, D.C. (202) 682-9800

BEST AVAILABLE COPY

19 pp

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
REPLY TO BRIEF IN OPPOSITION	1
I. The Agreement Which Codified VMC's Right To A Termination Fee Was Multilateral And Executed By NBW	2
II. The Brief In Opposition Fails to Respond To The Significant Errors In the Decision Below Identified In the Petition For Writ Of Certiorari	5
III. *Langley v. FDIC* Does Not Bar Equitable Defenses Based Upon The FDIC's Conduct	6
IV. Resort To The Administrative Claims Process Should Not Have Been Required Where, As Here, The Parties' Claims Were Inextricably Intertwined	7
V. This Proceeding Cannot Properly Conclude Without An Adjudication Of VMC's Right To A Setoff	8
CONCLUSION	9
APPENDIX	J
FDIC v. Marine Midland Realty Credit Corp., Nos. 92-1019 and 92-1020 (Excerpts from Brief of FDIC before the Court of Appeals for the Fourth Circuit) (June 30, 1993) . . .	1J

TABLE OF AUTHORITIES

Cases:	Page(s)
Agri Export Cooperative v. Universal Savings Ass'n v. RTC, 767 F. Supp 824 (S.D. Tex. 1991)	4, 6
Carteret Sav. Bank, P.A. v. Compton, Luther & Sons, 899 F.2d 340 (4th Cir. 1990)	5
D&H Pritchard, Contractor, Inc. v. Nelson, 147 F.2d 939 (4th Cir. 1945)	3
D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942)	6
FDIC v. Harrison, 735 F.2d 408 (9th Cir. 1984)	7
FDIC v. Hatmaker, 756 F.2d 34 (6th Cir. 1985)	5
FDIC v. Manatt, 688 F.Supp 1327 (E.D. Ark 1988) *aff'd*, 922 F.2d 486 (8th Cir.) *cert. denied*, 111 S.Ct. 2889 (1991)	3, 8
FDIC v. McClanahan, 795 F.2d 512 (5th Cir. 1986)	3
FDIC v. Merchants Nat'l Bank, 725 F.2d 634 (11th Cir. 1969)	3
FDIC v. Panelfab Puerto Rico, Inc., 739 F.2d 26 (1st Cir. 1984)	7
FDIC v. Wright, 942 F.2d 1089 (7th Cir. 1991) . .	5
Hampton Roads Shipping Ass'n v. Int'l Longshoremen's Ass'n, 597 F. Supp 709 (E.D. Va.), *remanded on other grounds*, 746 F.2d 1015, *cert. denied*, 471 U.S. 1017 (1984)	3

TABLE OF AUTHORITIES (Continued)

Cases:	**Page(s)**
Heckler v. Community Health Services of Crawford County, 467 U.S. 51 (1984)	6
Helvering v. Le Geirse, 312 U.S. 532 (1941)	3
Howell v. Continental Credit Corp., 655 F.2d 743 (7th Cir. 1981)	3-4
Langley v. FDIC, 484 U.S. 86 (1987)	6
Midlantic Nat'l Bank v. New Jersey Dept. of Environmental Protection, 474 U.S. 494 (1986)	5
In Re NBW Commercial Paper Litigation, Master File No. 90-1555, Civil Action No. 91-0626 (RCL) (D.D.C. Mar. 11, 1992) (Appendix G1-54)	4, 6
Riverside Park Realty Co. v. FDIC, 465 F. Supp 305 (M.D. Tenn. 1978)	4
RTC v. McCory, 951 F.2d 68 (5th Cir. 1992) . . .	5
RTC v. Ruggiero, 977 F.2d 309 (7th Cir. 1992) . .	4
Twin Construction, Inc. v. Boca Raton, Inc., 925 F.2d 378 (11th Cir. 1991)	4
Statute:	
12 U.S.C. § 1823(e)	*passim*

REPLY TO BRIEF IN OPPOSITION

The Brief in Opposition of the Federal Deposit Insurance Corporation ("the FDIC") is remarkable only because it offers nothing more than facile treatment for a complex case of national importance. Nowhere does the Opposition dispute that this case raises significant, recurrent issues about the power of federal regulatory agencies acting as receivers for failed depository institutions. Nowhere does it offer any reason why petitióner's claims were adjudicated under a standard different from that governing every other claim involving the FDIC in its capacity as receiver for the National Bank of Washington ("NBW"). The Opposition does not dispute that this case represents a unique application of 12 U.S.C. § 1823(e) in a context outside of suits on promissory notes, an application inconsistent with the statute's thirty year history and the precedent of every other federal court which has considered this issue. Nor does it suggest that petitioner's right to a setoff went uncontested below. For these reasons, and others explained below, petitioner respectfully submits that the standards for the issuance of a writ of *certiorari* have been satisfied.

I. The Agreement Which Codified VMC's Right To A Termination Fee Was Multilateral And Executed By NBW.

The FDIC's Opposition rests entirely upon a superficial premise; namely the contract providing for petitioner's termination fee supposedly "was not executed by" NBW in a manner required by 12 U.S.C. § 1823(e) and, therefore, it could not have been part of an enforceable multilateral agreement governing the sale of Vienna Mortgage Corporation ("VMC") to its current owner (Br. in Opp. at 5 & n.*). This argument fails to acknowledge that VMC has never suggested that the Amendment to the Whole Loan Sale and Servicing Agreement was executed in a manner which satisfied the standards of enforceability under section 1823(e).[1] Rather, VMC has demonstrated that the requirements of the statute are immaterial because the Amendment was part of a multilateral contract, one which NBW was a party.

The FDIC agrees with the principle of law that bilateral agreements with failed depository institutions are indeed enforceable without regard the requirements of section 1823(e) (Br. In Opp. at 5, n.*). Its argument that NBW was not a party to the Amendment to the Whole Loan Sale and Servicing Agreement is at odds with the undisputed evidence and binding precedent of this Court and the Fourth Circuit, as shown in the Petition for a Writ of Certiorari (at 22-24). In the undisputed words of petitioner's president, the Amendment to the Whole Loan Sale and Servicing Agreement which provided VMC to be paid a fee in the event of its termination as NBW's mortgage servicer was part of a larger, multi-party contract (JA 425-26). Absent agreement to pay this fee, NBW would never have been paid in excess of $3.6 million for the sale of VMC (JA 42221-22, 425-27,

[1] It bears mentioning that the person who served as the Chief Financial Officer of NBW executed the Amendment (JA 120-23) and that, as the FDIC knew, NBW's board was fully briefed on the substance of the transaction before it was consummated (JA 101).

439-41, 443). The Amendment to the Whole Loan Sale and Servicing Agreement was not, as the FDIC contends, an unenforceable unilateral agreement but a "component part" of a larger, integrated transaction (*Id.*).

This Court has clearly held that "contracts must be considered together" and not read as separate entities where calling them "distinct transactions is to ignore reality." *Helvering v. Le Geirse*, 312 U.S. 532, 540 (1941); *accord D.H. Pritchard, Contractor, Inc. v. Nelson*, 147 F.2d 939, 942 (4th Cir. 1945). They are to be treated as parts of an integrated whole even where, as here, each component agreement is not signed by every party. *Hampton Roads Shipping Ass'n v. Int'l Longshoremen's Ass'n*, 597 F. Supp. 709, 716 (E.D. Va.), *remanded on other grounds*, 746 F.2d 1015, *cert. denied*, 471 U.S. 1017, 1102 (1984). This is particularly true in this case because other components of the agreement of sale specifically referred to NBW as a party to the Amendment to the Whole Loan Sale and Servicing Agreement (JA 185-86).

Although the decision of the court of appeals did not appreciate the significance of this issue, petitioner and respondent do and both agree that the outcome of this case turns upon whether the Amendment was an isolated agreement between VMC and Washington Bancorporation ("WBC") or a part of a larger, multilateral transaction to which NBW was also a party (*Compare*, Pet. for Writ of Cert. at 17-21 *with* Br. in Opp. at 5, n.*). This is so because, as the Petition for a Writ of Certiorari carefully documents, every federal court which has addressed this issue has concluded that 12 U.S.C. § 1823(e) does not authorize the FDIC and its sister regulatory agencies to declare bilateral contracts with failed banks unenforceable. Rather, that statute applies exclusively to agreements relating to promissory notes and related unilateral obligations. *FDIC v. McClanahan*, 795 F.2d 512 (5th Cir. 1986); *FDIC v. Merchants National bank*, 725 F.2d 634 (11th Cir. 1969); *Howell v. Continental Credit*

Corp., 655 F.2d 743 (7th Cir. 1981); *Agri Export Cooperative v. Universal Savings Ass'n v. RTC*, 767 F. Supp. 824 (S.D. Tex. 1991); *Riverside Park Realty Co. v. FDIC*, 465 F. Supp. 305 (M.D. Tenn. 1978). Indeed, this is the conclusion of the very court which has jurisdiction over every other affirmative claim against the FDIC as receiver for NBW. *In Re NBW Commercial Paper Litigation* ("*In Re NBW*"), Master File No. 90-1555, Civil Action No. 91-0626 (RCL) (D.D.C. Mar. 11, 1992) (G1-54[2]).

The FDIC offers no sound reason for the Fourth Circuit's departure from the foregoing line of authority.[3] Nor does it explain why the outcome in this case is different from the decision in *In Re NBW*. The reason is simple. *In Re NBW* was correct and hence not appealed further. The instant case was erroneous which, unfortunately, is not preventing the FDIC from citing it as the law of the Fourth Circuit (App. J). Review by this Court is necessary to correct the Fourth Circuit's error, reconcile its conflict with other circuits, and resolve this issue of national significance.

---

[2] The reference "G1-54" is to that portion of the Appendix which accompanies the Petition for a Writ of Certiorari.

[3] Indeed, the principal authority upon which the FDIC relies expressly states that section 1823(e) "mandates that agreements between a borrower and a lender *concerning a loan* may not be read to defeat" the federal government's interest in the assets of a failed bank. *RTC v. Ruggiero*, 977 F.2d 309, 315 (7th Cir. 1992) (emphasis supplied). The sole remaining authority cited by the FDIC concerns itself with repayment and remedies under a construction loan and is to the same effect. *Twin Construction, Inc. v. Boca Raton, Inc.*, 925 F.2d 378 (11th Cir. 1991).

II. The Brief In Opposition Fails To Respond To The Significant Errors In The Decision Below Identified In The Petition For A Writ Of Certiorari.

The Petition for a Writ of Certiorari (at 15-21) advances many powerful grounds for concluding that the decision below was erroneous. The strategy behind the FDIC's Brief in Opposition is perplexing — it simply ignores every one. That the FDIC has done so does not mean, however, that this is an ordinary case representing a routine application of 12 U.S.C. § 1823(e).

Since the days of its original enactment in 1950, section 1823(e) has been consistently applied to invalidate secret payment terms not recorded on the face of promissory notes and related obligations. *E.g.*, *FDIC v. Hatmaker*, 756 F.2d 34, 37 (6th Cir. 1985). In point of fact, the only authority identified by the court of appeals in support of its decision below concerned applications of the statute in the context of a suit on a promissory note. *RTC v. McCrory*, 951 F.2d 68 (5th Cir. 1992); *FDIC v. Wright*, 942 F.2d 1089 (7th Cir. 1991); *Carteret Sav. Bank, F.A. v. Compton, Luther & Sons*, 899 F.2d 340 (4th Cir. 1990). Every case identified by respondent during the course of this litigation concerned an application of the statute within this context. And every attempt by a federal bank regulatory agency to apply section 1823(e) elsewhere was rejected by the courts. *See supra* at 3-4.

Aware of the consistent judicial interpretation of the statute, Congress reenacted section 1823(e) without any alteration in its scope as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). Congress' action means that it accepted the courts' application of section 1823(e) as correct and discerned no reason for its amendment. *See Midlantic Nat'l Bank v. New Jersey Dept. of Environmental Protection*, 474 U.S. 494 (1986). But now, alone among the courts of appeals and in the face of this

Congressional action, the Fourth Circuit has endorsed a far broader application of section 1823(e). The effects of this decision include overruling by implication the doctrine of *D'Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942), and forcibly restructuring the ordinary course of business dealings between banks and parties who contract with them. *Agri Export Cooperative*, 767 F. Supp. 833-34; *In Re NBW* (G26-27). That these are the effects of the decision below is not disputed in the Brief in Opposition. So sweeping and important a decision must be reviewed by this Court.

III. *Langley v. FDIC* Does Not Bar Equitable Defenses Based Upon The FDIC's Conduct.

In *Langley v. FDIC*, 484 U.S. 86 (1987), this Court granted *certiorari* to resolve a previous conflict between the circuits as to whether fraud on the part of officers of a failed bank provided grounds for excusing compliance with 12 U.S.C. § 1823(e). The *Langley* decision resolved that question in the negative. Seeking to take that decision one step farther, the FDIC argues that *Langley* immunizes conduct of its own officials from judicial scrutiny even where, as here, the transaction in question was undertaken with the knowledge, encouragement and assent of the FDIC and its sister regulatory agencies.

There is no precedent to this effect. For the reasons discussed previously in the Petition for a Writ of Certiorari (at 24-27), there should not be. Where, as here, the FDIC and its sister regulatory agencies actively encouraged a transaction, pledged to honor that transaction in the event of a bank's subsequent insolvency, and retained the consideration received by the bank in that transaction, there is every reason to estop the FDIC from interposing 12 U.S.C. § 1823(e) in later litigation. *Heckler v. Community Health Services of Crawford County*, 467 U.S. 51, 61-62 (1984).

Although VMC will not reiterate the arguments it has made earlier, there is one remarkable contention of the FDIC which simply cannot go left unrebutted.

The Brief in Opposition (at 6) asserts that: "Petitioner cites no decision of any court allowing a party to interpose [an equitable] defense" to an action brought by the FDIC as receiver of a failed bank. In point of fact, the Ninth Circuit specifically affirmed the application of equitable estoppel against the FDIC in an action brought as "liquidating agent or receiver of an insolvent bank" that was governed by application of 12 U.S.C. § 1823(e) "where, as here, the conduct of the FDIC itself gave rise to the defense of estoppel." *FDIC v. Harrison*, 735 F.2d 408, 412-13, n.6 (9th Cir. 1984). This very decision was addressed in the Petition for a Writ of Certiorari (at 25-26), which demonstrates not only that respondent's research and arguments are faulty but that it has paid inadequate attention to the issues raised by petitioner. *See also FDIC v. Panelfab Puerto Rico, Inc.*, 739 F.2d 26, 30 (1st Cir. 1984) (estopping the FDIC from invoking section 1823(e) in an action concerning revocation of a guaranty).

IV. Resort To The Administrative Claims Process Should Not Have Been Required Where, As Here, The Parties' Claims Were Inextricably Intertwined.

VMC unsuccessfully exhausted the administrative process on its affirmative claims and was barred from proceeding in district court by virtue of the outcome in this case even before the court of appeals heard argument below (D1-2). Ignoring these proceedings, the FDIC argues "that petitioner . . . failed to establish that resort to the administrative process would be futile" and that there is no reason for "supposing that it would be useful for this Court" to review this issue (Br. in Opp. at 8). The first portion of this argument can be easily refuted by a review of the record below (D1-2). The second upon appreciating that VMC was deeply prejudiced not merely by being

required to exhaust illusory administrative process, but by having to do so while the FDIC's case proceeded. This prejudice, the mechanism of which was explained in greater detail in the Petition for a Writ of Certiorari (at 27-30), warrants further review of this issue by this Court.

V. This Proceeding Cannot Properly Conclude Without An Adjudication Of VMC's Right To A Setoff.

The Petition for a Writ of Certiorari (at 21) clearly states that the FDIC "never disputed VMC's right to an offset or credit against the judgment." Nonetheless, the court of appeals allowed this case to conclude with the entry of a judgment in the gross amount of VMC's obligation without reduction for its undisputed setoff (*Id.*). The Brief in Opposition neither denies the accuracy of VMC's arguments nor justifies the lower court's inaction. And well it should not for elsewhere, the FDIC has readily reduced the judgment sought in an action concerning an agreement rendered invalid by application of section 1823(e) by the amount of consideration received by the failed bank in that same transaction. *FDIC v. Manatt*, 688 F. Supp. 1327, 1323 (E.D. Ark. 1988), *aff'd*, 922 F.2d 486 (8th Cir.), *cert. denied*, 111 S.Ct. 2889 (1991).

Regardless of the merits of the arguments advanced by the FDIC in general and against VMC's affirmative claims in particular, there is no disputing that this case was terminated prematurely without a reduction in VMC's favor. Even should the Court not grant *certiorari* and review this case in its entirety — and petitioner respectfully submits that it should — it should nonetheless be remanded to the court of appeals for further proceedings concerning VMC's right to a reduction in the judgment. There is simply no reason why the consequences of the lower court's adverse decisions should be compounded by the entry of a judgment against VMC in an amount that fails to take account of the credit to which it is entitled, a setoff which the FDIC itself does not dispute.

CONCLUSION

For the foregoing reasons and those expressed in its Petition for a Writ of Certiorari, petitioner Vienna Mortgage Corporation respectfully requests that the Court issue a writ of certiorari to review the decision of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

Robert C. Seldon, Esq.
(Counsel Of Record)
Bonnie Y. Hochman, Esq.
Krooth & Altman
1850 M Street, N.W.
Fourth Floor
Washington, D.C. 20036

Counsel for Petitioner
Vienna Mortgage Corporation

Date: August 16, 1993.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 92-1019 and 92-1020

FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR
NEW BANK OF NEW ENGLAND, N.A.
Plaintiff, Appellee, Cross-Appellant,

v.

MARINE MIDLAND REALTY CORPORATION, *et al.*,
Defendants, Appellants, Cross-Appellee.

On Appeal from the United States District Court
For the Eastern District of Virginia Alexandria Division

BRIEF OF THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR NEW BANK OF NEW ENGLAND, N.A. AS APPELLEE/CROSS-APPELLANT

ANN S. DuROSS
Assistant General Counsel
RICHARD J. OSTERMAN, JR.
Senior Counsel
JEROME A. MADDEN
Counsel
S. ALYSSA ROBERTS
Attorney
Federal deposit Insurance
Corporation
550 17th Street, N.W.
Washington, D.C. 20429
(202) 898-3505

June 30, 1993

TABLE OF AUTHORITIES

CASE	PAGE
Amoco Oil Co. v. Torcomian, 722 F.2d 1099 (3rd Cir. 1983)	40
Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959)	37-38
Borgh v. Gentry, 953 F.2d 1309 (11th Cir. 1992)	35
Campbell Leasing, Inc. v. FDIC, 901 F.2d 1244 (5th Cir. 1990)	16, 26
Catawba Indian Tribe of South Carolina v. State of South Carolina, et al., 978 F.2d 1334 (4th Cir. 1992)	3
Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry, 494 U.S. 561 (1989)	34, 35, 37
Coit Independence Joint Venture v. FSLIC, 489 U.S. 558 (1989)	28
Curtis v. Loether, 415 U.S. 189 (1974)	34, 39
D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942)	15
Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962)	33, 35, 37, 39
Davis v. Ampthill Rayon Workers, Inc., 446 F. Supp. 681 (E.D. Va. 1978), *aff'd*, 594 F.2d 856 (4th Cir. 1979)	36
FDIC v. Bank of Boulder, 911 F.2d 1466 (10th Cir. 1990), *cert. denied*, 111 S. Ct. 1103 (1991)	18
FDIC v. Fedders, No. 92-107, 1993 U.S. Dist. LEXIS 6502 (D. Mass, May 11, 1993)	31

FDIC v. Shain, Schaffer & Rafanello, 944 F.2d 129 (3rd Cir. 1991) 30

FDIC v. State Bank of Virden, 893 F.2d 139 (7th Cir. 1990) 24, 26

FDIC v. Vienna Mortgage et al., No. 92-1091, 1993 U.S. App. Lexis 2053 (4th Cir. Feb. 5, 1993) . 29, 30

FDIC v. Wood, 758 F.2d 156 (6th Cir.) *cert. denied*, 474 U.S. 944 (1985) 10

FSLIC v. Two Rivers Associates, 880 F.2d 1267 (11th Cir. 1989) 16, 18

First Indiana Fed. Savings Bank v. FDIC, 964 F.2d 503 (5th Cir. 1992) 20, 22, 25

Fusari v. Steinberg, 419 U.S. 379 (1975) 28

Gosnell v. FDIC, 938 F.2d 372 (2d Cir. 1991) . . . 17

Grant County Sav. & Loan Ass'n v. RTC, 770 F. Supp. 1374 (E.D. Ark. 1991), *rev'd on other grounds*, 968 F.2d 722 (8th Cir. 1993) 26

Henderson v. Bank of New England, 986 F.2d 319 (9th Cir. 1993) 29

Hildebrand v. Board of Trustees of Mich. State Univ., 607 F.2d 705 (6th Cir. 1979), *cert. denied*, 456 U.S. 910 (1982) 38, 39

Keller v. Prince George's County 827 F.2d 952 (4th Cir 1987) 3

Langley v. FDIC, 484 U.S. 86 (1987) 16

Marquis v. FDIC, 965 F.2d 1148 (1st Cir. 1992) 29, 30

Meliezer v. FDIC, 952 F.2d 879 (5th Cir. 1992) 29, 31

Myers v. United States District Court, 620 F.2d 741 (9th Cir. 1980) 35

NCNB Texas Nat'l Bank v. Cowden, 895 F.2d 1488 (5th Cir. 1990) 18

Ochoa v. American Oil Co., 338 F. Supp. 914 (S.D. Tex. 1972) 34

Payne v. Security Sav. & Loan Ass'n, F.A., 924 F.2d 107 (7th Cir, 1991) 19, 25

RTC v. Elman, 949 F.2d 624 (2nd Cir. 1991) 29

RTC v. Mustang Partners, 946 F.2d 103 (10th Cir. 1991) 29, 30

Ross v. Bernhard, 396 U.S. 531 (1970) 36

Scott v. Armstrong, 146 U.S. 499 (1892) 24

Seaboard Lumber Co. v. United States, 903 F.2d 1560 (Fed. Cir. 1990) *cert. denied*, 111 S. Ct. 1308 (1991) 35

Simmons v. Avisco, Local 713, 350 F.2d 1012 (4th Cir. 1965 40

Texas American Bancshares Inc. v. Clarke, 954 F.2d 329 (5th Cir. 1992) 22

Tights, Inc. v. Stanley, 441 F.2d 336 (4th Cir.), *cert. denied*, 404 U.S. 852 (1971)37, 40 . . . . . .

Trigo v. FDIC, 847 F.2d 1499 (11th Cir. 1988) 16, 18

United Liberty Life Ins. Co. v. Ryan, No. 91-3933, 1993 WL 36160 (6th Cir, Feb. 17, 1993) . . . 17

United States v. American Ry. Express Co., 265 U.S. 425 (1924) 28

United States v. Snepp, 595 F.2d 926 (4th Cir. 1979) 38

Welch v. United States, 309 U.S. 688 (1940) 34

Woodell v. Int'l Bhd. of Elec. Workers, 112 S. Ct. 494 (1991) 34

STATUTES

Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 842 12

12 U.S.C. § 1818 (i) 21

12 U.S.C. § 1819(b) 2

12 U.S.C. § 1819(b)(2)(A) 16

12 U.S.C. § 1921(d) 14, 31

12 U.S.C § 1821(d)(2) 4, 10

12 U.S.C. § 1821(d)(2)(A) 16

12 U.S.C. § 1821(d)(2)(F)(i) 19

12 U.S.C. § 1821(d)(2)(G)(i)(II) 17

12 U.S.C. § 1821(d)(2)(H) 17

12 U.S.C. § 1821(d)(3)-(13) 11, 29

12 U.S.C. § 1821(d)(3)(A) 28

12 U.S.C. § 1821(d)(3)(b)(i) 31

12 U.S.C. § 1821(d)(5) 30

12 U.S.C. § 1821(d)(5)(C)(i) 31

12 U.S.C. § 1821(d)(5)(D) 28

12 U.S.C. § 1821(d)(6) 29

12 U.S.C. § 1821(d)(7) 29

12 U.S.C. § 1821(d)(13) 12

12 U.S.C. § 1821(d)(13)(i) 14
12 U.S.C. § 1821(d)(13)(D)(ii) 14
12 U.S.C. § 1821(i) 22
12 U.S.C. § 1821(n) 4, 10
12 U.S.C. § 1821(n)(12) 12
12 U.S.C. § 1821(n)(1)(B)(III) 18
12 U.S.C. § 1821(n)(4)(I) 15
12 U.S.C. § 1823(c) 17
12 U.S.C. § 1823(e) 15
28 U.S.C. § 1291 2
28 U.S.C. § 1332 1

RULES

Fed. R. Civ. P. 2 33
Fed. R. Civ. P. 18 33
Fed. R. Civ. P. 3

OTHER AUTHORITIES

Financial Institutions Reform, Recovery, and Enforcement Act of 1989, ("FIRREA"), Pub. L. 101-73, 103 Stat. 842 12
H.R. Rep. No. 101-54(I), 101st Cong., 1st Sess., *reprinted* in 1989 U.S.C.C.A.N. 87, 214 . . . 28
H.R. Rep. No. 101-54(I), 101st Cong., 1st Sess., *reprinted* in 1989 U.S.C.C.A.N. 87, 215 . . . 29
9 J. Moore, *Federal Practice*, § 204.11[3] 28
J. Moore, *Moore's Federal Practice* ¶38.23 (2d ed. 1993) 35
U.S. Constitution amend. VII 33